

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

UNITED STATES OF AMERICA ex rel.  
CORI RIGSBY and KERRI RIGSBY

RELATORS/COUNTER-DEFENDANTS

v.

CASE NO. 1:06cv433-LTS-RHW

STATE FARM MUTUAL INSURANCE COMPANY

DEFENDANT/COUNTER-PLAINTIFF

and

FORENSIC ANALYSIS ENGINEERING CORPORATION;  
EXPONENT, INC.; HAAG ENGINEERING CO.;  
JADE ENGINEERING; RIMKUS CONSULTING GROUP INC.;  
STRUCTURES GROUP; E.A. RENFROE, INC.;  
JANA RENFROE; GENE RENFROE; and  
ALEXIS KING

DEFENDANTS

**DEFENDANT/COUNTER-PLAINTIFF STATE FARM FIRE AND CASUALTY COMPANY'S  
MEMORANDUM IN SUPPORT OF MOTION TO CLARIFY  
THE NON-APPLICATION OF MISSISSIPPI COMPETENCY LAW**

Robert C. Galloway (MSB # 4388)  
Jeffrey A. Walker (MSB # 6879)  
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Federal Rule of Evidence 601 provides that state competency law applies in civil actions where “State law supplies the rule of decision.” In *Bossier v. State Farm Fire and Casualty Co.*, 2009 WL 4061501 (S.D. Miss. Nov. 20, 2009), this Court barred an otherwise qualified engineering expert on the grounds that he was not licensed to provide expert testimony pursuant to “Mississippi substantive law made binding on this Court in all diversity cases under Rule 601 of the Federal Rules of Evidence.” *Id.* at \*3. In the course of rendering its decision, this Court stated that its earlier decisions “serve[] to give fair notice to the litigants and attorneys in Katrina cases that the statute and regulations at issue will be honored.” *Id.* Expert designations are fast approaching, *see* (Case Management Order [365]), and State Farm has previously identified at least one expert in this matter who would at least arguably be required to, but does not currently, possess a limited Mississippi engineering license if state law applied. *See* Miss. Code Ann. § 73-13-1, *et seq.*; Miss. Bd. of Licensure for Prof’l Eng’rs & Surveyors R. 4.05. State Farm respectfully requests this Court to enter an Order holding that state competency law does not apply in this federal False Claims Act case, which is not a diversity case, but rather arises under federal law.

Federal Rule of Evidence 601 states:

Every person is competent to be a witness except as otherwise provided in these rules. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the competency of a witness shall be determined in accordance with State law.

In this case, the Rigsbys’ claims are based entirely on alleged violations of the federal False Claims Act, 31 U.S.C. §§ 3729, *et seq.* *See* (Relators’ First Am. Compl. [16].) Because federal law supplies the rule of decision in this case, state competency law does not apply under Rule 601.

Federal courts, including the Fifth Circuit, have long recognized that state competency law does not apply under Rule 601 in cases arising under federal law. For example, in *Longoria v. Wilson*, 730 F.2d 300 (5th Cir. 1984), a case arising under a federal civil rights law, 42 U.S.C. § 1983, the defendant argued that the district court erred by allowing witnesses to testify in violation of a state competency

statute. *See id.* at 301, 304. Affirming the district court, the Fifth Circuit explained that “[a]lthough it is true that under [Rule] 601 the competency of a witness is to be ‘determined in accordance with State law,’ that rule is limited to cases where ‘State law supplies the rule of decision,’ or diversity cases.” *Id.* at 304 (quoting Fed. R. Evid. 601). Because the case before the court was “a federal question-based civil rights inquiry under § 1983,” the Fifth Circuit held that “the state statute simply does not apply.” *Id.* at 304-05 & n.8. Likewise, in *Phoenix Mutual Life Insurance Co. v. Adams*, 30 F.3d 554 (4th Cir. 1994), a case arising under the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1144, the Fourth Circuit held that “[b]ecause federal law supplies the rule of decision in the case,” state competency law did not apply under Rule 601. *Id.* at 566. As Judge Weinstein has stated in his leading treatise on the federal rules of evidence, “[b]ecause the competency of witnesses in federal question cases is determined solely by federal law pursuant to Rule 601, state competency law does not apply.” 3 Jack B. Weinstein & Margaret A. Berger, *Weinstein’s Federal Evidence* § 601.05[3] (2d ed. 2009).

In *Bossier*, this Court indicated that it was well-aware that state competency law applied only because it was a diversity case where state law supplied the rule of decision. Thus, as this Court repeatedly made clear, “I am duty bound to follow Mississippi law in determining the competency of all witnesses in this diversity action,” *Bossier* “is a diversity action,” state competency law is “made binding on this Court in all diversity cases under Rule 601 of the Federal Rules of Evidence,” “[t]he matter before me is ... an issue of the competency of an expert witness in this diversity case, an issue governed by Rule 601,” and “[t]his is a diversity action in which the substantive law of Mississippi applies.” *Bossier*, 2009 WL 4061501 at \*\*1, 3, 6. Unlike *Bossier*, federal law supplies the rule of decision in this case which arises under federal law. Thus, state competency law does not apply.<sup>1</sup>

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<sup>1</sup> As the foregoing analysis demonstrates, *Bossier*’s application of Mississippi law under Rule 601, with which State Farm respectfully disagrees, does not and cannot apply here.

**CONCLUSION**

For the foregoing reasons, State Farm respectfully requests that this Court enter an Order holding that state competency law does not apply in this case, which arises under federal law.

This the 9th day of December, 2009.

Respectfully submitted,

STATE FARM FIRE AND CASUALTY COMPANY

By: /s/ Robert C. Galloway (MSB # 4388)  
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**CERTIFICATE OF SERVICE**

I, Robert C. Galloway, one of the attorneys for State Farm Fire and Casualty Company, do hereby certify that I have this day caused a true and correct copy of the foregoing instrument to be delivered to the following, via the means directed by the Court's Electronic Filing System:

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This the 9th day of December, 2009.

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